

**REMARKS**

This amendment responds to the Office Action mailed on March 1, 2004, rejecting claims 1-10, 18-27, 43-50, 61 and 62, and withdrawing claims 11-17, 28-42 and 51-60 from consideration. Claims 1, 4, 6-20, 22, 24, 28-48 and 51-62 have been amended. The withdrawn claims have been amended to depend from the non-withdrawn claims. As such, Applicants request reconsideration of all of the pending claims. The specification has been amended to correct two typographical errors. No new matter has been added. Applicants respectfully submit that the application is in condition for allowance. Accordingly, Applicants request reconsideration, removal of the rejections, and allowance of all of the pending claims (including the previously withdrawn claims).

**INTERVIEW SUMMARY**

Applicants appreciate the courtesy shown by the Examiner to Attorney Steinberg in a telephone interview on March 25, 2004. In the telephone interview, Applicants requested the Examiner's opinion as to the patentability of claims 1, 18, 43, 48 and 61 if amended to recite two radiation sources that have difference wavelengths or if amended to recite two sources in one meridional plane and that each emits a ray that passes onto a sensor. No agreement was reached and Applicants reserved the right to pursue the pending claims without amendment. In addition, Applicants pointed out that the Office Action does not articulate a basis for rejecting at least one of the claims, e.g., claim 19.

**AMENDMENT TO SPECIFICATION**

The specification has been amended to replace "Written #47" and "Written #25" with "Wratten #47" and "Wratten #25", respectively, in order to correct these typographical errors. No new matter has been added.

**CLAIM REJECTIONS**

The Office Action rejects claims 1-3, 6-7, 9-10, 18-27, 43-44, 46-50 and 61-62 under 35 U.S.C. §102(b) as being anticipated by Hertel et al (U.S. Patent No. 6,118,531). Claims 4,5, and 45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hertel et al. Claim 8 is

rejected under 35 U.S.C. § 103(a) as being unpatentable over Hertel et al. in view of Winslow et al. (U.S. Patent No. 5,489,977).

Claims 1, 4, 6-20, 22, 24, 28-48 and 51-62 have been amended.

Claim 1, as amended, recites "a device for optically measuring qualities of a substance in ambient light comprising: at least one translucent wall defining a sample chamber for receiving therein the substance to be measured and defining an axis; a first channel defining a first meridional plane and including thereon: at least one radiation source mounted adjacent to the sample chamber, wherein the at least one radiation source includes a first radiation source and a second radiation source, the first radiation source and the second radiation source being axially spaced relative to each other, the first radiation source emits a modulated beam of radiation distinguishable from the ambient light based on said modulation and the second radiation source emits a modulated beam of radiation distinguishable from the ambient light based on said modulation; and at least one detector angularly spaced about the axis of the sample chamber relative to the first and second radiation sources, wherein the at least one detector includes a first detector, the first radiation source is positioned so that a principle ray emitting therefrom substantially passes onto the first detector, the second radiation source is positioned so that a principle ray emitting therefrom substantially passes onto the first detector, the first detector receives the modulated beams of radiation after passage through the sample chamber and substance to be measured therein, and generates a modulated output signal indicative of the intensity of the radiation of the beams impinging thereon; a second channel defining a second meridional plane and including thereon at least one radiation source mounted adjacent to the sample chamber, wherein the at least one radiation source of the second channel includes a third radiation source that emits a modulated beam of radiation distinguishable from the ambient light based on said modulation; a controller coupled to the first radiation source and the first detector for activating the source and processing the output signal; and a display coupled to the controller."

Neither Hertel et al. nor Winslow et al. nor any proposed combination thereof teaches or suggests a device with first and second channels defining first and second meridional planes, respectively, the first channel including first and second radiation sources and a first detector, the first and second radiation sources being axially spaced relative to each other and each positioned

so that a principle ray emitting therefrom substantially passes onto the first detector, as recited in amended claim 1.

Accordingly, reconsideration and allowance of claim 1, as amended, is respectfully requested.

Claims 2-17 depend from claim 1 and are patentable for at least the same reasons as for claim 1. Reconsideration and allowance of claims 2-17 is respectfully requested.

Claim 18, as amended, recites a device with first and second channels defining first and second meridional planes, respectively, the first channel including first and second radiation sources and a first sensor, the first and second radiation sources being axially spaced relative to each other and each positioned so that a principle ray emitting therefrom substantially passes onto the first sensor.

Neither, Hertel et al., nor Winslow et al. nor any proposed combination thereof, teaches or suggests such a device.

Accordingly, reconsideration and allowance of claim 18, as amended, is respectfully requested.

Claims 19-42 depend from claim 18 and are patentable for at least the same reasons as for claim 18. Reconsideration and allowance of claims 19-42 is respectfully requested.

Claim 43, as amended, recites a device comprising first and second channels defining first and second meridional planes, respectively, the first channel including a first detector, a second means positioned so that a principle ray emitting therefrom substantially passes onto the first detector and a third means positioned so that a principle ray emitting therefrom substantially passes onto the first detector.

Neither, Hertel et al., nor Winslow et al. nor any proposed combination thereof, teaches or suggests such a device.

Claims 44-47 depend from claim 43 and are patentable for at least the same reasons as for claim 43. Reconsideration and allowance of claims 44-47 is respectfully requested.

Claim 48, as amended, recites a method comprising the steps of providing first and second channels defining first and second meridional planes, respectively, the first channel including a first radiation source, a second radiation source, and a first detector, the first and

second radiation sources being axially spaced relative to each other and each being positioned so that a principle ray emitting therefrom substantially passes onto the first detector.

Neither, Hertel et al., nor Winslow et al. nor any proposed combination thereof, teaches or suggests such a method.

Claims 49-50 depend from claim 48 and are patentable for at least the same reasons as for claim 48. Reconsideration and allowance of claims 49-50 is respectfully requested.

Claim 61, as amended, recites an instrument comprising first and second means for defining first and second meridional planes, respectively, the first means including a detector, second means positioned so that a principle ray emitting therefrom substantially passes onto the detector and third means positioned so that a principle ray emitting therefrom substantially passes onto the detector.

Neither, Hertel et al., nor Winslow et al. nor any proposed combination thereof, teaches or suggests such an instrument.

Claim 62 depends from claim 61 and is patentable for at least the same reasons as for claim 61. Reconsideration and allowance of claim 62 is respectfully requested.

Finally, Applicants point out that the Office Action does not articulate a basis for rejecting at least one of the previously pending claims, e.g., claim 19. Accordingly, if after this response, the Examiner decides to issue another Office Action rejecting any of the claims, the Examiner is requested to issue a NEW NON-FINAL OFFICE ACTION that completely articulates the basis for each of the rejections.

### CONCLUSION

This application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Attorney at the telephone number listed below.

Because the reasons above are sufficient to traverse the rejections, Applicants have not explored, nor do they now present, other possible reasons for traversing such rejections. Nonetheless, Applicants expressly reserve the right to do so, if appropriate, in any future

response or proceeding. In addition, Applicant expressly reserves the right to pursue the original claims and/or the previously pending claims in one or more continuation and/or divisional applications.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time.

If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-1402.

Respectfully submitted,



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